IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Sultan Singh Vs. State of Rajasthan
(D.B. Criminal Appeal No.1161/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 31-7-2003 in Sessions Case No.27/2003 (253/2001) (219/2001) passed by Shri Ajay Kumar Sharda, RHJS, Special Judge SC/ST (PA) Jhalawar.

Date of Judgment: July 11, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. Arvind Kumar Gupta] for the appellant.
Mr. Harsh Sani]
Mr. Vaibhav Gehlot]
Mr. Ravi K.Yadav]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

In a religious function `story telling of Lord of Truth' (Satya Narayan ki Katha) organised by Vijay Singh in front of his house on May 24, 2001, certain miscreants indiscriminately opened fire, as a result of which Vikram Singh and Indira Bai died and many others sustained injuries. Despite nine assailants named in the FIR, only two viz. Sultan Singh, appellant herein, and one Mokham Singh were put to trial before learned Special Judge SC/ST (PA) Act Jhalawar, who while acquitting Mokham Singh, convicted and sentenced the appellant under section 302 IPC to suffer imprisonment for life and fine of Rs.2000/-, in default to further suffer simple imprisonment for one year.

2. It is the prosecution case that on May 24, 2001 at 11.15 PM Vijay Singh (Pw.22) of village Guradia Jogi telephonically informed Police Station Misroli that Sultan Singh, Kripal Singh, Narain Singh, Laxman Singh, Toofan Singh, Mokham Singh, Durga Lal, Satya Narain and Guman Singh came armed with deadly weapons in front of his house and indiscriminately opened fire at the persons gathered in `Katha'. The information was registered in Rojnamcha Aam (Ex.P-56A) and Madan Lal SHO along with police squad proceeded to village Guradia Jogi where written report (Ex.P-29) was handed over to him by Vijay Singh. It was inter alia stated in the report that nine miscreants (named in the telephonic information) came armed with guns and swords around 11 PM to his house. At that tiem `Katha' of `Satya Narayan Bhagwan' was in progress and persons gathered there were patiently listening `Katha'. Sultan Singh opened fire at him (Vijay Singh), but his son Hadmat Singh caught the gun and changed its direction. Sultan Singh opened another fire that hit Vikram Singh, who fell down and died. Thereafter Durga Lal opened fire which hit Indra Bai, who became unconscious. Mokham Singh exhorted to kill the family of Vijay Singh and opened fire which hit Gopal Prajapat and Gopal Dhobi. Kripal Singh, Narain Singh and Durga Lal also caused injuries to many persons. On that report a case under sections 147, 148, 149, 307 and 302 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded and on completion of investigation charge sheet was filed against the appellant and Mokham Singh. In due course the case came up for trial before the learned Special Judge SC/ST (PA) Jhalawar. Charges under sections 302, 302/34, 307, 307/34, 323 and 323/34 IPC and 3/25 Arms Act were framed against the

accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 31 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence and stated that since there was enmity of plying buses they have been implicated falsely. No witness in support of their defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned counsel for the appellant, learned Public Prosecutor and with their assistance scanned the material on record.

4. Death of Indra Bai and Vikram Singh was undeniably homicidal in nature. As per Post Mortem Report (Ex.P-10) following ante mortem injuries were found on the dead body of Indra Bai:-

> 1. Lacerated wound 1 x 1cm margin black in colum blood with brain matter comes out from wound present over ½ above left eye brow.
> 2. Lacerated wound 1 x 1cm margin black muscle deep Rt. lower eye lid.

In the opinion of Dr. Gauri Shankar Chauhan (Pw.10) the cause of death was coma due to head injury by fire arm.

Post Mortem Report (Ex.P-39) of Vikram Singh shows ante mortem injuries as under:-

> Multiple small usecular wound size of small panut deep to skin and deep into the chest cavity 8-10 in numbers. 8-10 small wounds on skull bleeding.

In the opinion of Dr. Kaushal Kumar Joia (Pw.26) the cause of death

was injuries to vital organs heart and brain as result of gun shot.

5. We have also perused the injuries sustained by Munni Bai vide injury report (Ex.P-44), Chandri Bai (Pw.2) vide injury report (Ex.P-45), Mangi Bai vide injury report (Ex.P-47), Smt.Kachri Bai (Pw.1) vide injury report (Ex.P-48), Gopal Lal vide injury report (Ex.P-49), Gopal vide injury report (Ex.P-50), Gayatri Bai (Pw.17) vide injury report (Ex.P-51) and Radhey Shyam (Pw.28) vide injury report (Ex.P-52).

6. Coming to the prosecution evidence we notice that the informant Vijay Singh (Pw.22) verbatim narrated the facts incorporated in the written report (Ex.P-29). In the cross examination he deposed that `Katha-wachak' (story teller) who was a man, himself came to him and offered to worship Lord Satya Narayan. The informant admitted that he telephonically informed the police about the incident and disclosed the names of assailants as well as the deceased. Thirty minutes thereafter police arrived. In the meanwhile he got the report drawn from Tofan Singh. His sons Hadmat Singh and Sujan Singh were present at the time of incident but they did not sustain any injury. Informant further stated that on the date of incident appellant Sultan Singh was Ward Member, who defeated Tofan Singh. The informant too did contest election twice but he always lost election. He admitted that he had enmity with Sultan Singh and Durga Lal. Although he was sitting outside of his house but marks of bullets were not found on the walls of his house. He denied this suggestion that the person who opened fire were Kanjars. He also stated that quarrel continued till thirty minutes. Although he and Hadmat Singh were remained at the place of incident, they did not sustain any injury.

7. Testimony of Vijay Singh gets corroboration from the evidence of Hadmat Singh (Pw.23) and Tofan Singh (Pw.25), but these witnesses have deposed that `Katha' was narrated by a woman `Sadhvi' and not by a man.

8. Madan Lal IO (Pw.29) deposed that at the time of incident one `Meera Bai' was addressing the gathering. He further stated that during investigation it was revealed that Vijay Singh had enmity with Sultan Singh. He denied this suggestion that gun was not recovered at the instance of Sultan Singh but it was planted by him (Madan Lal).

9. Kachari Bai (Pw.1) in her deposition stated that she was present in Bhajan Recitation programme of Meera Bai. Around 100 men and women were listening Bhajans. Suddenly three-four persons came over there. Their faces were covered with clothes. They opened fire as a result of which she sustained injury. In her cross examination she stated that Vijay Singh, Hadmat Singh, Tofan Singh, Mokham Singh and Sultan Singh were not present at the time of incident. She was declared hostile by the prosecution.

10. Chandri Bai (Pw.2) deposed that while she was listening `Bhajans' of Meera Bai, she heard that Kanjars arrived. She too was declared hostile. Ram Chandra @ Chanda Lal (Pw.3) stated that persons who opened fire at the people, came over there with covered faces. Paras Mal Jain (Pw.4), Bal Chand (Pw.5) Bala Ram (Pw.6), Gopal Singh (Pw.7), Kanhaiya Lal (Pw.8), Dulhe Singh (Pw.9), Gordhan Singh (Pw.11), Bheru Singh (Pw.12), Nag Singh (Pw.13), Pratap Singh (Pw.14) and Gayatri Bai (Pw.17) categorically deposed that the persons who opened fire, had covered their

faces and Vijay Singh, Hadmat Singh, Tofan Singh, Mokham Singh and Sultan Singh were not present at the time of incident.

11. Motbirs of recovery of gun viz.Brajesh Kumar Vyas (Pw.15) and Om Prakash (Pw.16) deposed that gun was not recovered at the instance of Sultan Singh.

12. Factual situation of the case may be summarized as under:-

(i) Vijay Singh had business rivalry with appellant Sultan Singh. They were political opponents also and they had strained relations.

(ii) In the FIR as many as nine persons were named as assailants, but charge sheet was filed only against appellant Sultan Singh and one Mokham Singh.

(iii) Vijay Singh, Hadmat Singh and Tofan Singh although remained present at the place of incident amongst the shower of bullets and pellets they did not sustain any injury.

(iv) Vijay Singh deposed that `Satya Narain Katha' was narrated by a man whereas according to Hadmat Singh and Tofan Singh it was a woman who was addressing the gathering at the time of incident.

(v) Motbirs of recovery of gun at the instance of appellant Sultan Singh did not support the prosecution story.

(vi) All the persons who were present in the programme deposed in one voice that Sultan Singh, Vijay Singh, Hadmat Singh, Tofan Singh and Mokham Singh were not present at the time of incident

and the persons who opened fire at the people came over there with covered faces.

13. We find it difficult to believe that persons who were amongst the shower of bullets for about thirty minutes, would not sustain even an abrasion. On examining the testimony of Vijay Singh, Hadmat Singh and Tofan Singh from the point of view of trustworthiness we find them wholly unreliable witnesses. The prosecution in our opinion could not establish the guilt of appellant beyond reasonable doubt. In the facts and circumstances of the case this possibility cannot be ruled out that the appellant was falsely implicated in the case because of business rivalry and political enmity.

14. For these reasons, we allow the appeal and set aside the impugned judgment dated July 31, 2003 of the learned Special Judge, SC/ST (Prevention of Atrocities) Cases, Jhalawar. We acquit the appellant Sultan Singh of the charge under section 302 IPC. The appellant Sultan Singh, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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